

August 17 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 09-0522

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AUG 17 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

O R D E R

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ROLAND DEE TIREY,

Defendant and Appellant.

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Roland Dee Tirey, by counsel, has filed a motion for the recusal of the Honorable Chief Justice Mike McGrath from this proceeding. The State of Montana has filed a brief in opposition to the motion.

Briefing having been concluded, this matter has now been submitted to the Court for consideration by a five-person panel. The panel to which this case has been submitted does not include Chief Justice McGrath. If four or more persons on the panel reach a conclusion, the matter will be deemed classified, the case assigned for writing, and this motion will be mooted. If four justices do not vote for one position, the case will be assigned for en banc consideration. Montana Supreme Court Internal Operating Rule 1(3)(e). Accordingly,

IT IS HEREBY ORDERED that Tirey's Motion for Recusal is STAYED pending submission to the five-person panel assigned to the case. In the event four or more justices on the panel reach a conclusion, the recusal motion shall be deemed denied as moot. If the matter must go to the Court en banc, this motion shall then be considered on its merits.

The Clerk of this Court is directed to serve a copy of this Order on all counsel of record.

DATED this 17<sup>th</sup> day of August, 2010.

Patricia Cotter

James S.

William Daphney

Michael E. Wheat

Justices